IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JEVAN SNEAD,	**§**	**CIVIL NO. 5:16-cv-01134**
Individually and on Behalf of All	**§**	
Others Similarly Situated	**§**	
Plaintiff,	**§**	
	§	**COLLECTIVE ACTION**
VS.	**§**	
	§	
EOG RESOURCES, INC.,	**§**	
Defendant.	**§**	**JURY TRIAL DEMANDED**

INDIVIDUAL AND COLLECTIVE ACTION COMPLAINT

NATURE OF THE ACTION

1. Plaintiff Jevan Snead brings this civil action pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. (the "FLSA" or the "Act") on behalf of himself and on behalf of all those similarly situated, to recover unpaid back wages (29 U.S.C. § 211(a)), an additional equal amount as liquidated damages (29 U.S.C. § 216(c)), attorneys' fees and costs (29 U.S.C. § 216), and pre- and post-judgment interest.

2. Plaintiff, as a putative collective/class representative, also seeks certification of this suit as a collective action on behalf of all current and former in-office logistics coordinator employees of Defendant under Defendant's "Shared Services" department providing services related to coordinating the logistics of services to Defendant's rigs (including, but not limited to, rental equipment, forklifts, Port O Jonnys, Fluid Management Consultants, Water Transfer Consultants, generators, fuel, light towers, trash trainers, and fracking tank coordinators) which are further described, referenced and identified below, but otherwise wrongly described by their employers as

"consultants" or "contractors" (hereinafter collectively referred to as "similarly situated in-office logistics coordinators under Shared Services" or "similarly situated employees").

THE PARTIES

3. **Plaintiff Jevan Snead** (hereinafter referred to as "Plaintiff Snead" or "Snead") is a resident of Austin, Texas. Plaintiff Snead was employed by Defendant as a "Shared Services" Fluid Management Consultant employee. He was so employed for over 2 years from January 7, 2014 until August 2016.

4. **Defendant EOG Resources, Inc.** (hereinafter referred to as "Defendant" or "EOG"), is a Delaware corporation, which, among other things, is engaged in the business of exploring for and producing oil, gas and other hydrocarbons in the onshore and offshore areas of the continental United States, and further maintains a presence and corporate address in San Antonio, Bexar County, Texas 78259. Defendant EOG may be served with process by delivering a copy of the Summons and Complaint to its Registered Agent, being CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever else it may be found.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1131 (federal question jurisdiction) and 29 U.S.C. § 216(b) (the FLSA).

6. The actions, inactions, underpayment of wages, and employment policies alleged to be unlawful were knowingly and intentionally committed by EOG in and around San Antonio, Bexar County, Texas, where Defendant is located, and where

Plaintiff and others similarly situated worked. Therefore, this action is within the jurisdiction of the United States District Court for the Western District of Texas and venue is proper in the Western District of Texas, San Antonio Division.

BACKGROUND AND STATEMENT OF CLAIMS

7. Defendant hired approximately eighteen (18) employees to work at its San Antonio offices from 2014 to the present to coordinate logistic services for its wells. *See* **Exhibit 1** (listing the "Shared Services" employees in the San Antonio office), which is incorporated by this reference as if set forth fully herein. Upon information and belief, Defendant also employs a similar number of "consultants" in five (5) other U.S. offices (including, but not limited to, Denver, Corpus Christi, Tyler, Oklahoma City and Midland) to perform logistic services for its wells.

A. Not Paid Overtime Premiums.

8. Plaintiff's primary job functions, and the primary job functions of the other similarly situated in-office logistics coordinators under Shared Services, was to coordinate the use of trucks (carrying fluids and/or solids) to and from rig locations.

9. Plaintiff and others similarly situated were "on call 24/7." **Exhibit 2**, which is incorporated by this reference as if set forth fully herein.

10. For this work, Plaintiff and all other similarly situated in-office logistics coordinators under Shared Services were paid a daily rate for each day of work, with an additional (different) daily rate ("Truck Rate") for days worked in EOG's office, with no additional compensation for overtime on hours in excess of forty (40) hours in a workweek. **Exhibit 3**, which is incorporated by this reference as if fully set forth herein.

11. Plaintiff and all other similarly situated employees were required to work 7 days per week, 24 hours per day, which far exceeded forty (40) hours per workweek. *See* **Exhibit 2**.

12. Defendant made no payroll tax or other withholdings from the daily rates paid to Plaintiff, or other similarly situated employees, and reported their income to the IRS by 1099.

13. Defendant made no guaranteed minimum pay per week, such that Plaintiff and the similarly situated other employees were paid only when they worked, and with no minimum workweek being guaranteed.

14. Defendant paid Plaintiff and the other similarly situated employees a daily rate of pay with an additional (different) form of compensation ("Truck Rate") for work performed in the office. Because Defendant paid Plaintiff and others similarly situated a daily rate plus an additional form of compensation, overtime would be due at a rate of one-and-one-half the regular rate of pay.

15. Plaintiff, and other similarly situated employees, did not supervise two or more workers on a regular basis within the meaning of the FLSA's overtime exemption for managerial/executive employees.

16. The primary duty of Plaintiff, and other similarly situated employees, was production work, not "administrative" work within the meaning of the FLSA.

17. Plaintiff, and other similarly situated employees, were not guaranteed any specific number of paid hours or days in any workweek, and they were not paid on a salary basis.

18. Plaintiff and other similarly situated employees were non-exempt within the meaning of the FLSA.

19. Notwithstanding the fact that Plaintiff and other similarly situated employees were non-exempt, Defendant never paid Plaintiff (or any other similarly situated employees) any overtime.

20. Defendant was required to pay Plaintiff and all other similarly situated employees as non-exempt employees, one and one-half times their regular rate of pay for any hours worked in excess of forty (40) hours in a workweek.

21. Defendant knew it was required by the FLSA to pay one and one-half times their regular rate for the overtime work of Plaintiff and all others similarly situated.

22. Defendant willfully failed to pay the Plaintiff, and all other similarly situated employees, any overtime.

23. The failure to pay overtime to Plaintiff and others similarly situated is a violation of the FLSA, including §§ 207(a) and 15(a)(2).

B. Misclassified As Independent Contractors.

24. Although not permitted in this Circuit, Defendant required Plaintiff and others similarly situated to sign a "Master Service Agreement" ("MSA") which purported to indemnify Defendant from all "losses, damages, claims, costs, liabilities, and/or other expenses arising out of or incurred in connection with" Defendant's "alleged or actual misclassification" of Plaintiff as an independent contractor. Defendant's conduct in requiring Plaintiff and others similarly situated to sign these agreements shows its lack of good faith and willful conduct under the FLSA.

25. Plaintiff and other similarly situated employees were required by Defendant to comply with instructions about when, where and how their work was to be done.

26. Defendant provided Plaintiff and other similarly situated employees with training to enable them to perform their jobs in a particular method or manner.

27. The services provided by Plaintiff and other similarly situated employees were integrated into Defendant's business operations.

28. All services Plaintiff and other similarly situated employees provided for Defendant were required by Defendant to be performed by them personally and pursuant to EOG's MSA, "you must obtain written consent of EOG Resources, Inc. prior to using the services of any subcontractors." **Exhibit 4**, which is incorporated by this reference as if set forth fully herein.

29. Plaintiff and other similarly situated employees did not have the capability or authority to hire, supervise, or pay assistants to help them perform the services that they were being paid to perform. *Id.*

30. Plaintiff and others similarly situated were required to adhere to EOG's Code of Business Conduct and Ethics for Vendors and Contractors, as well as EOG's Code of Business Conduct and Ethics for Directors, Officers and Employees.

31. Plaintiff and others similarly situated were also required to adhere to EOG's Drug-Free Workplace Policy.

32. Plaintiff, and all other similarly situated employees, worked significantly more than forty (40) hours in most workweeks.

33. The relationship between Defendant and Plaintiff, and other similarly situated employees, was a continuing relationship. For example, Plaintiff worked for Defendant continuously for over 2 years.

34. Defendant set all days and hours of work for Plaintiff and other similarly situated employees.

35. Plaintiff and all other similarly situated employees were required to turn in the numbers of days they worked per week. Defendant did not require Plaintiff and others similarly situated to keep any time records in violation of the FLSA's recordkeeping requirements.

36. Plaintiff and other similarly situated employees were required by Defendant to devote their full time to their job at Defendant's place of business.

37. Defendant directed the order or sequence in which Plaintiff and other similarly situated employees performed their work.

38. Defendant paid Plaintiff and other similarly situated employees a daily rate for all days worked and an additional (different) daily rate ("Truck Rate") for days worked in EOG's office.

39. Defendant provided Plaintiff and all other similarly situated employees all materials, equipment and supplies to perform their work. Specifically, Defendant provided each employee with a dedicated e-mail address, computer, telephone, assigned office, desk, chair, paper, supplies, etc. *See* **Exhibits 5 and 6** which are incorporated by this reference as if set forth fully herein.

40. Defendant also provided Plaintiff and others similarly situated with an EOG stamp for use on vendor invoices which states Plaintiff was an "EOG Rep." **Exhibit 7_**, which is incorporated by this reference as if set forth fully herein.

41. Defendant also provided Plaintiff and other similarly situated employees with business cards containing EOG's logo, EOG's office location, and an EOG e-mail address. **Exhibit 8**, which is incorporated by this reference as if set forth fully herein.

42. In or about January 2016, Defendant instructed Plaintiff and others similarly situated to return all of their business cards, but would not provide them with a reason why.

43. Defendant also reimbursed Plaintiff and others similarly situated for the premium on the umbrella insurance policies Defendant required Plaintiff and others similarly situated to obtain.

44. Defendant added Plaintiff and others similarly situated to their worker's compensation "insurance [they] supply for consultants." **Exhibit_9**, which is incorporated by this reference as if set forth fully herein.

45. Plaintiff, and other similarly situated employees, were provided e-mail addresses with a "@eogresources.com" domain name. *See* **Exhibit 8**, which is incorporated by this reference as if set forth fully herein.

46. Plaintiff's "Worker" profile within EOG's Human Resource system shows Plaintiff and others similarly situated had EOG's employees as their "managers," were granted access to EOG's systems, and were provided equipment like an "Aircard," a card

for "Building Access," as well as a laptop computer. *See* **Exhibit 10**, which is incorporated by this reference as if set forth fully herein.

47. Defendant also loaded their "business applications (email, calendaring, contacts, etc.)" on Plaintiff's (and others similarly situated) personal cell phone. *See* **Exhibit 6**, which is incorporated by this reference as if set forth fully herein.

48. Plaintiff and other similarly situated employees performed their services for Defendant at EOG's facility located at 19100 Ridgewood Parkway, Building 2, San Antonio, Texas 78259.

49. Plaintiff and all other similarly situated employees had no investment in the facilities where they were required to perform their jobs.

50. Plaintiff and all other similarly situated employees had no opportunity to realize either a profit or a loss, other than their fixed, daily rates.

51. Plaintiff and all other similarly situated employees were subject to termination for reasons other than nonperformance of contract specifications.

52. Plaintiff and all other similarly situated employees were able to terminate their relationship with Defendant without incurring a liability for failure to complete a job.

53. Plaintiff and others similarly situated were even invited to participate in EOG's "National Employee Appreciation Day at EOG San Antonio Division" with a "10-minute therapeutic chair massage." **Exhibit 11**, which is incorporated by this reference as if set forth fully herein

54. Plaintiff and all other similarly situated in-office logistics coordinators under Shared Services were, therefore, employees of Defendant, and not independent contractors.

CLASS/COLLECTIVE ACTION ALLEGATIONS

55. Plaintiff hereby adopts and incorporates by reference all of the foregoing paragraphs, allegations and Exhibits, as if set forth herein again.

56. There is a collective/class of in excess of eighteen (18) other in-office logistics coordinators under Shared Services from the San Antonio office (and likely more than sixty (60) in-office logistics coordinators under Shared Services nationwide) who have performed work similar to the Plaintiff since at least January 2014.

57. The similarly situated employees have been paid two forms of compensation (two different daily rates—a regular day rate and a "Truck Rate") for all hours worked, regardless of number of hours, thus requiring overtime due at a rate of an additional one-and one-half times the regular rate of pay for all hours worked in excess of forty (40) hours in each workweek.

58. Furthermore, the Plaintiff and other similarly situated employees have not supervised two or more workers on a regular basis within the meaning of the FLSA's overtime exemption for managerial/executive employees.

59. Additionally, the primary duty of the Plaintiff and other similarly situated employees was and is production work, not "administrative" work within the meaning of the FLSA.

60. Plaintiff and the similarly situated employees were not guaranteed any specific number of paid days in any workweek and they were not paid on a salary basis.

61. Plaintiff and the similarly situated employees are non-exempt within the meaning of the FLSA.

62. Plaintiff and the similarly situated employees have consistently worked more than forty (40) hours in most workweeks since at least January 2014.

63. Plaintiff and the similarly situated employees have not been paid for overtime at one and one-half times the regular rate of pay for hours worked in excess of forty (40) hours in most workweeks since at least January 2014.

64. Because Plaintiff and the similarly situated employees were paid a day rate plus an additional form of compensation they are entitled to payment of overtime at the rate of an additional one and one-half times their regular rate of pay since at least January 2014.

65. Plaintiff and the similarly situated employees of Defendant on whose behalf this lawsuit is brought include all present and former employees of Defendant who have held positions as in-office logistics coordinators under Shared Services or who have performed duties similar to the duties performed by the Plaintiff in the past three years. These individuals have been subject to the same policies and practices as the Plaintiff regarding non-payment of overtime wages at an additional one and one-half times their regular rate of pay.

66. Defendant has violated 29 U.S.C. § 207 of the FLSA by failing to pay the Plaintiff, and all other similarly situated in-office logistics coordinators under Shared

Services, overtime compensation required by the FLSA in workweeks in which such employees have worked in excess of forty (40) hours.

67. Defendant's violations have been willful.

68. The class/collective is so numerous that joinder of all members is impracticable.

69. There are questions of law and fact common to the class/collective.

70. The claims or defenses of the representative Plaintiff Snead are typical of the claims or defenses of the class/collective.

71. The representative Plaintiff Snead will fairly and adequately protect the interests of the collective/class.

72. Counsel for the Plaintiff, Starzyk & Associates, P.C., has conducted significant investigation as to potential claims and parties in this case.

73. Prosecuting this case as a class/collective action for similarly situated employees who have been unlawfully denied overtime wages will promote judicial efficiency and will best protect the interest of the class/collective members.

74. There are no conflicts of interest among the class/collective members.

75. Counsel for the Plaintiff, Starzyk & Associates, P.C., are knowledgeable and experienced in the field of employment law (specifically including overtime claims under the FLSA), class/collective actions and complex litigation, and can and will fairly and competently represent the interests of all class members.

76. Counsel for Plaintiff has and will commit the human and financial resources necessary to represent the class/collective.

77. Plaintiff's written Consent to this action is attached as **Exhibit 12** and incorporated by this reference as if set forth herein.

OVERTIME - FAIR LABOR STANDARDS ACT (FLSA)
(INDIVIDUAL AND CLASS/COLLECTIVE ACTION)

78. Plaintiff hereby adopts and incorporates by reference all of the foregoing paragraphs, allegations and Exhibits, as if set forth herein again.

79. Plaintiff and all other similarly situated employees were and are non-exempt.

80. Plaintiff and all other similarly situated employees are entitled to overtime at a rate of an additional one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours per workweek.

81. Plaintiff and all other similarly situated employees have worked in excess of forty (40) hours in most workweeks since at least January 2014.

82. Defendant has failed to pay overtime to Plaintiff and all other similarly situated employees for hours worked in excess of forty (40) hours in many workweeks since at least January 2014.

83. Plaintiff and the other similarly situated employees are further entitled to recover an additional equal amount as liquidated damages (29 U.S.C. § 216(c)) and attorneys' fees and costs (29 U.S.C. § 216).

84. Defendant's failure to pay overtime was willful, thus entitling Plaintiff and others similarly situated to a three year statute of limitations.

WHEREFORE, Plaintiff Jevan Snead, through his undersigned counsel, respectfully requests that this Court:

A. Upon proper motion, enter an order certifying this suit as a collective action on behalf of all current and former similarly situated in-office logistics coordinators of EOG Resources, Inc. under the Shared Services group performing services for EOG nationwide, regardless of what title they were initially or later given by Defendant, and that notice therefore be distributed to all putative class/collective members;

B. Order Defendant to make the Plaintiff and all other similarly situated in-office logistics coordinators under Shared Services whole by paying overtime wages due;

C. Order Defendant to pay interest and liquidated damages on all wages owed;

D. Order Defendant to make proper payments of all Federal withholdings and taxes to the Internal Revenue Service;

E. Order Defendant to make the Plaintiff, and all other similarly situated in-office logistics coordinators under Shared Services, whole by paying monetary damages, liquidated damages, interest and other affirmative relief necessary to eradicate the effects of its illegal actions;

F. Order Defendant to pay costs and attorneys' fees incurred by the Plaintiff and all other similarly situated in-office logistics coordinators under Shared Services; and

H. Grant such further relief as the Court deems necessary and proper.

RESPECTFULLY SUBMITTED,

*/s/ Michael A. Starzyk.*____________
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